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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,354	02/08/2002	Brian C. Miller	5410	2806

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09/26/2003

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No.	Applicant(s)	
	10/071,354	MILLER ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4 – 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 4 is indefinite. Claim 4 states that the textile article can be a “fabric, film, or combination thereof.” However, claim 4 depends from claim 3 which states that the textile article “is comprised of spun-bonded continuous multi-component fibers”. Therefore, the textile article can not be a film layer by itself since claim 3 requires a fibrous spun-bonded layer, and claim 4 is indefinite. Claims 5 – 29 are rejected due to their dependency on claim 4.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1 – 29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 and 42 of copending

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Application No. 10/071,427. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of claims 1 – 29 encompasses the scope of the products recited in claim 21 and 42 of Application No. 10/071,427.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 – 6 and 22 – 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Groten et al. (5,899,785).

Groten et al. discloses a nonwoven fabric formed from very fine continuous filaments (abstract). The nonwoven fabric is formed by extruding and bonding multicomponent fibers simultaneously, which would produce a spun-bonded fabric (column 4, lines 35 – 38). The fibers are then physically or chemically treated to at least partially split the incompatible components into individual filaments (column 4, lines 42 – 45). The incompatible components are made from polyamide and polyester components (Figure 1). Finally, Groten et al. teaches that the fabric can be chemically treated with anti-pilling treatments, hydrophilic treatments, and modification of its feel and luster, as well as modifications of its external appearance such as dyeing or printing (column 5, lines 1 – 9). The hydrophilic treatment would produce a fabric with soil release properties since the polyester component would more easily absorb water and

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thus, be more easy to wash and remove dirt. Therefore, the fabric would be treated to achieve a fabric with pilling resistance, soil release, strength and abrasion resistance properties to some degree due to the structure and chemical modifications of the fabric. Hence, claims 1 – 6 are anticipated.

With respect to claims 22 – 29 which recite the intended use of the fabric, it has been held that a recitation with respect to the manner in which a claimed product is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitation. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, these claims are rejected with claim 4, on which they depend since they fail to add further structure to the claimed textile article.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Vigo et al. (5,897,952).

Vigo et al. discloses a chemically treatment which produces a fabric comprising soil release, durable press, resistance to static charge, abrasion resistance, pilling resistance, and water absorbency (abstract). The chemical treatment can be applied to all types of fibrous constructions including nonwoven fabrics (column 1, lines 60 – 65). Thus, the treated nonwoven fabric would achieve some degree of abrasion resistance, pilling resistance, soil release, and strength. Therefore, claim 1 is anticipated.

Claim Rejections - 35 USC § 102/103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 7 – 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Groten et al.

The features of Groten et al. have been set forth above. Although Groten et al. does not explicitly teach the limitations of pilling resistance, wearer comfort, life of fabric, appearance retention, soil release, lack of staining, strength, and abrasion resistance, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. a spun-bonded continuous nonwoven fabric, polyester and polyamide) and in the similar production steps (i.e. chemically treating the fabric to achieve soil release and pilling resistance) used to produce the finished fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed limitations would obviously have been provided by the process disclosed by Groten et al. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102.

Claim Rejections - 35 USC § 103

11. Claims 2 – 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vigo et al. in view of Groten et al.

The features of Groten et al. and Vigo et al. have been set forth above. While Vigo et al. teaches the treatment can be applied to various fabric types and fiber types, Vigo et al. fails to teach using a nonwoven fabric made from continuous polyamide and polyester fibers formed by spun-bonding. Groten et al. is drawn to a spun-bonded fabric which can be chemically treated. Groten et al. teaches that the nonwoven fabric has characteristics and properties that are at least

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equal to woven and knit fabrics, while being produced by techniques which are clearly more efficient and less costly. Therefore, it would have been obvious to one of ordinary skill in the art to use the fabric taught by Groten et al. with the chemical treatment taught by Vigo et al. since Groten et al. teaches that the nonwoven fabric has properties of woven and knit fabric while being less expensive and Vigo et al. teaches that the chemical treatment can be applied to various fabrics and fiber types. Thus, claims 2 – 6 are rejected. Additionally, claims 22 – 29 are rejected since those claims only recite the intended use of the fabric and fail to add further structural limitations to the fabric.

Although the limitations of pilling resistance, wearer comfort, life of fabric, appearance retention, soil release, lack of staining, strength, and abrasion resistance are not explicitly taught by Vigo et al. or Groten et al., it is reasonable to presume that said limitations would be met by the combination of the two references. Support for said presumption is found in the use of similar materials (i.e. a spun-bonded continuous nonwoven fabric, polyester and polyamide) and in the similar production steps (i.e. chemically treating the fabric to achieve soil release, pilling resistance, abrasion resistance and strength) used to produce the treated fabric. The burden is upon the Applicant to prove otherwise. Thus, claims 7 – 21 are rejected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
September 21, 2003



CHERYL A. JUSKA
PRIMARY EXAMINER